

Opinion No. 2012-123

October 1, 2012

George E. Butler, Jr.  
Washington County Attorney  
Washington County Courthouse  
280 North College, Suite 501  
Fayetteville, Arkansas 72701

Dear Mr. Butler:

You have requested my opinion regarding the Arkansas Freedom of Information Act (“FOIA”). Your request, which is made as the custodian’s attorney, is based on A.C.A. § 25-19-105(c)(3)(B)(i) (Supp. 2011). This subsection authorizes the custodian, requester, or the subject of personnel or employee evaluation records to seek an opinion from this office stating whether the custodian’s decision regarding the release of such records is consistent with the FOIA.

Your opinion request appears to be a follow-up from an opinion I issued to you a few weeks ago—Opinion No. 2012-119. You convey a letter from the custodian for the Boston Mountain Solid Waste District who reports that the District has “received a request pursuant to the FOIA for a copy of the former Director’s personnel file.” The custodian goes on to say that she has “determined [that] some of the records are job evaluation records, which did not play a part in the Director’s termination, and, thus, should not be released.” In contrast, the custodian plans to release redacted copies of several documents that she classifies as personnel records. She asks for my opinion on whether these decisions are consistent with the FOIA.

**RESPONSE**

Based on the information before me, I believe that the custodian’s decisions are consistent with the FOIA.

In Opinion No. 2012-119, which is enclosed for your convenience, I explained all the relevant FOIA provisions governing the disclosure of personnel and employee evaluation records. Accordingly, instead of repeating these provisions here, we can simply apply them to the documents at issue.

The custodian has properly classified four of the pages as employee evaluation records. It is evident from the face of these records that they were created at the employer's behest to evaluate the former Director. Hence, the records qualify as the Director's "employee evaluation." As explained in the enclosed opinion, a necessary but insufficient condition for the release of evaluation records is that records formed a basis for the employee's final suspension or termination. I have no way to "look behind" the custodian claim that that these records did not form a basis for the Director's termination. So I can simply say that, if the custodian is correct, then the custodian's decision to withhold these four pages records is consistent with the FOIA.

The custodian has also properly classified the remaining pages as personnel records, which, as explained in the enclosed opinion, must be disclosed unless doing so would be a clearly unwarranted invasion of personal privacy. In my opinion, the release of these documents does not rise to that level. Therefore, the custodian has properly decided to release the documents. In addition, the custodian has correctly redacted several discrete pieces of information on these records, such as social security numbers, home address, and date of birth, and information about dependents.

Assistant Attorney General Ryan Owsley prepared this opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL  
Attorney General

DM/RO:cyh

Enclosure